S. Bij 9/53

1953.

File No.

K

Legal DEPARTMENT

E. BRANCH

Subject:— Suits..... Bijapur.

C.S. No. 372 of 1952

Vasudeo Gurunath Kulkarni

v/s

The State of Bombay

For setting aside the order of Govt., dismissing him from the Police Force; for reinstatement in service, and arrears of pay.

62(E)

S. Bij 9/53

File No.

Std. Scott. Slip 24-B

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Ex 11

In the =Court of Civil Judge, Senior Division, Bijapur.

Vasudeo Gurunath Kulkarni, Brahmin, Occupation Nil, Age 38 years, resident of Ahirsang Taluka Indi District Bijapur.

... Plaintiff.

Vs.

The State of Bombay.
The Summons to be served on the Collector of Bijapur

Claim Rs. 2711-6-0
For court fees Rs. 2916-0-0
For Jurisdiction & Pleader's fees. Rs.

The above named plaintiff states as follows :-

(1) The above named plaintiff is filing this suit for setting aside the order of his dismissal on the ground of its being ultra vires as it voilates the Constitution of India and as the dismissal is wrongful and void and in operative and also for his re-instatement in service as well as to get the arrears of his pay and allowances under the circumstances mentioned in the plaint.

(2) Plaintiff after passing his Matriculation Examination in the year 1932 was appointed as Unarmed constable at Bijapur on or about 15=2=1934 and worked in that capacity in the Police Department of Bombay Government upto the year 1945. During the interval viz. in 1943, he passed his Head Constable's course at Nasik and stood 5th in about 80 students who were trained for that Course during the year.

(3) In 1945 he was appointed as Head Constable and was posted at Kerur Police Station in Badami Taluka of Bijapur District and was confirmed as Head Constable in the year 1946. In the month of January he was doing the - - duties of Head Constable on beat duty at Kerur Police Station. From 1934 up to 1946 his services was unblemished and his service book will show that he was even recommended for being selected to the Course of Sub-Inspectors Post.

(4) About the end of January 1946, the plaintiff was falsely involved by one Shri Sayyad Ayub Hussain in

in a Criminal Case under section 342 and 161 (wrongful confinement and attempting to take bribe) along with P.C. Mahibub Karimsaheb and H.C. Parappa which criminal case being numbered 115 of 1946 was tried by R.M.F.C.Bagalkot and the said Magistrate on 7-4-1947 convicted all the three accused including the plaintiff and plaintiff was sentenced on or about 7-4-1947 to undergo R.I. for 3 months and to pay a fine of rupees ~~m~~ hundred in default to suffer further R.I. for one month.

(5) Against this conviction the plaintiff filed Criminal Appeal No. 17 of 1947 before the Sessions Judge at Bijapur. The said Criminal Appeal was heard and decided on by the Additional Sessions Judge, Bijapur, on 21-10-1947 and the plaintiff was acquitted and discharged and his fine was also remitted.

(6) The plaintiff particularly submits that the said acquittal of the plaintiff by the Additional Sessions Judge was not on account of any technical defect in the Prosecution but the Judgment of acquittal will definitely show that the acquittal was what is termed " as honourable acquittal" the learned Judge who heard the appeal having come to the conclusion that the plaintiff was not definitely involved in the offence. In this way it will be seen that plaintiff was involved in the said offence without any reasonsable cause and that he was quite innocent of the charge brought against him.

(7) After the conviction of the plaintiff on or about 7-4-1947 a Departmental charge for his dismissal from his service was framed against him on or about 2-5-47 and the said Departmental enquiry was conducted by the Dy.S.P.Bagalkot and inspite of the fact that plaintiff had preferred an appeal against his conviction and inspite of plaintiff's request that the Departmental enquiry should be held over till the decision of plaintiff's criminal appeal, the Dy.S.P. Bagalkot proceeded with the Departmental inquiry and submitted his report to the D.S.P. in or about June

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June 1947 and without giving any opportunity to the plaintiff to show cause why he should not be dismissed eith -r before the Dy.S.P. or the D.S.P. an order of dismissal from the Police Service was passed against the plaintiff on or about 12-6-1947. The said order was contrary to the rules and was also Law, Equity, and good conscience in as much as an appeal from the order of conviction was still pending and also as no opportunity to hear the plaintiff was given to him.

(8) As submitted above the plaintiff being honourably acquitted on 21-10-1947 he made a representation in the month of November 1947 that under Rule No. 1278(14) of the Bombay Police Manual, Part III, that the previous proceedings in which he was wrongly and unlawfully dismissed should be reopned and that he should be reinstated in his former position. Inspite of several representations made to all the Authorities including the Honourable Home Minister and the Honourable Chief Minister, the plaintiff's prayer to reopen the enquiry was not granted and he remained a dismissed servant from the Police Force.

When the plaintiff found that all his prayers for setting aside the order of his dismissal were not properly attended to, he served a notice of an intended suit under section 80 of C.P.C. against Government mentioning the cause of action as follows :-

(a) That his dismissal was wrongful and illegal as the

(b) That he was entitled to damages [illegible] dismissal and was entitled to reinstatement and also for mandatory injuction etc.

A copy of the notice was served on or about 27=4=50 which was duly received by Government, is filed along with plaint.

(10) It appears that when this notice was received by Government, they became aware of the injustice and illegality committed to the plaintiff in passing the order of dismissal and to set the matter right it was necessary to reinstate the plaintiff in service and which the Government should have done having found their injustice and illegality; but it will be seen that Government still wanted to persist in their wrongful and illegal act after giving a legalised form to their wrongful act as is described below :-

On receipt of plaintiff's notice under section 80 of C.P.C. the plaintiff was informed by the D.S.P. Bijapur by his order dated 30-5-1950 that the plaintiff was reinstated in service (Police Dept) from 13-6-1947 as his former illegal order of dismissal came in force from 12-6-50 at Bagalkot. Immediately on joining the duties on 3-6-50, the D.S.P.Bijapur again sent a wire that plaintiff should be relieved from duties from 3-6-1950 and that the order of I.G.P. were awaited.

(11) After ~~the order of~~ this curious procedure again on 4-7-50 the D.S.P. issued fresh order on or about 4-7-50 to the effect that the plaintiff was reinstated in service as from 13-6-47. And accordingly plaintiff joined his duties at Bagalkot from 6-7-1950. This order was obviously passed after receiving instructions from the I.G.P. When thus the plaintiff was allowed to join the duty on 6-7-50 ~~almost corrected~~ over for all the wrongful action taken against the plaintiff. But it appears that for reasons best known to them Government had the intention of still persisting in the wrongful Act done by them and wanted to be vindictive and oppressive against the plaintiff and it appears that ~~i~~ their vindictive action when the whole thing was buried again on 5-9-50, a charge was framed against the aintiff by the Dy.S.P.

Dy.S.P.Bagalkot to the effect " that the plaintiff while serving at Kerur Police Station in the year 1946 with the connivance of U.H.C. Parappa and Ex. P.C. ~~Kxix~~ Mahibubsab with the common intention attempted to obtain an illegal gratification of Rs. 5/- from Shri Sayyad Ayub Hussein etc

(12) When the above charge was served on the plaintiff he filed his reply to it on 7-9-50 and after full hearing the Dy.S.P.Bagalkot exonerated the plaintiff of the said charges and held him to be quite innocent and reported accordingly to the D.S.P. who, it is learnt, concurred in the said finding and reported to the D.I.G.P., S.R., Belgaum, who also concurring in the finding reported to the I.G.P. who in his turn reported to Government after concurring in the findings about the innocence of the plaintiff.

(13) Inspite of all the concurrent findings plaintiff submits that Government issued a notice to the plaintiff on 16-7-51 which is signed by the Secretary to the Government of Bombay H.D. that " Government did not accept the recommendation of the above officers and considered that the charge of grave misconduct was proved against the plaintiff and issued notice H.D. No. S/153/210/G dated 29-6-51 calling upon the plaintiff to show cause within 15 days as to why he should not be dismissed from Police Force and threatening the plaintiff to inflict such punishment or to pass such order as deemed fit in case he failed to show cause.

(14) The plaintiff showed cause in writing on or about 25-7-51 which was within the period allowed by Government and also prayed for personal interview which was not granted and ultimately on or about 27-9-51 an order was passed by Government to the effect that Government did not accept the recommendations of its own officers as it considered that the charge of grave misconduct was proved against the plaintiff and in result passed orders by G....H.D.No. 8153/210 dated 27-9-51 dismissing the plaintiff from Police service

and the same was communicated to the plaintiff by the order of the D.S.P. dated 3-10-51 which was communicated to the plaintiff on 10-10-51 and since that date the plaintiff has been dismissed.

(15) The plaintiff is filing this suit to get the order of dismissal passed against him by G.I.H.D.No. 8153/210/ dated 27-9-51 and communicated to him on 10-10-51 set aside and for his reinstatement in service under his proper grade as well as to recover the amount of his arrears of pay and Allowances to which he is entitled according to the rules having force of Law in force.

(16) The plaintiff is claiming Rs. 2711-6-0 as the . . . arrears of his pay as under the P.R.Rule No. 1278(5) (a) Part III, he being honorably acquitted was entitled to have his full pay and all allowances of which he was in receipt prior to his dismissal. In this way plaintiff's full pay for the period from 12-6-47 to 4-7-50 was entitled to an amount of Rs. 5572-5-0 whereas he was given Rs. 2860-14-6 only and thus under the above Rule the plaintiff being honourably acquitted he is entitled to the balance of Rs. 2711-6-0 which he is claiming in this suit. Plaintiff is also claiming the setting aside the order of his dismissal dated 27-9-51 on the ground that the said order of dismissal violates the constitution of India in as much as Arti le 311(3) is violated as the decision of the Authority empowered to dismiss or to remove the plaintiff or to reduce him in rank is final under this Article and all the Officers of Govt. including the I.G.P. had passed orders that plaintiff was innocent of the charge and recommended for reinstatement.

(17) Similarly the order of ~~dismissal~~ dismissal passed against the plaintiff is contrary to the spirit of Article 20 of the Constitution of India as such also it requires to be set aside. Similarly the said order passed by Government is perverse and vindictive and contrary to the principles of ~~Equity~~ Equity, natural justice and good conscience and

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and therefore by this suit the plaintiff prays that the said order dated 27-9-51 be declared to be ultra vires, void and inoperative and plaintiff may be ordered to be reinstated in his former position and also plaintiff is claiming Rs. 2711-6-0 as the arrears of his pay. For the above purposes the present suit is filed by the plaintiff.

Reliefs

(18) The cause of action for the plaintiff for this suit arose on or about 27-9-51 both for recovering the amount and for getting the order of dismissal set aside and reinstatement within the jurisdiction of this Court.

The suit valued as follows :-

At Rs. 2711-6-0	For recovering of arrears of his pay.
At Rs. 200-0-0	For declaration that the order of dismissal is ultra vires and null and void as against the plaintiff.
At Rs. 5-0-0	For mandatory injuction to reinstate- ~~xxxx~~ the plaintiff.

In this way for the purpose court fees and jurisdiction the suit is valued at Rs. 2916-6-0.

The suit being against the State of Bombay is filed in the Court of Civil Judge, Senior Division, Bijapur.

(19) The suit being against the State of Bombay, a statutory notice under section 80 of the Civil Procedure Code was given and was delivered to the Collector of Bijapur and Secretary to Govt. H.D. stating the cause of action, name, description and place of residence of plaintiff and the relief which the plaintiff claims.

details

(a) The plaintiff prays as follows :-

~~The plaintiff prays as~~ The order of dismissal passed against the plaintiff on or about 27-9-51 be set asi as void and ultra vires and against the principles o natural justice, equity, and good conscience and also as perverse and vindictive.

(b) A mandatory injuction may be issued against the Defendant to reinstate the plaintiff in his former position in the Police Force.

(c) ~~A mandatory injuction may be issued against the~~

(P.T.O.).

(c) Rupees 2711-6-0 may be awarded to the plaintiff as claimed for the arrears of his pay.

(d) Interest on the amount may be allowed to the plaintiff from the date of notice to the date of payment.

(e) Cost of the suit may be awarded to the plaintiff and such other reliefs as the plaintiff may be entitled to on the facts mentioned in the plaint.

(20) Plaintiff holds no property either moveable or immoveable and he is unable to pay the requisite court fees stamp. The plaintiff has not disposed of any property moveable or immoveable during the last year.

He has made no agreement regarding the suit claim with any person.

The plaintiff being a PAUPER and unable to pay the requuisite court fees, the suit is filed in forma pauperis and it is humbly prayed that permission may be granted to the plaintiff to file this suit and prosecute it in forma pauperis.

Bijapur 19yh April 1952.

Sd/- x x x
Plaintiff.

1. The plaintiff named above hereby solemnly affirm that the statements made in the plaint in paras 1 to 20 are true according to my information believed to be true.

Solemnly affirm this day of 19th April 1952.

Sd/- V.G.Kulkarni.

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Bijapur C.S.No.372 of 1952.

This is a suit filed by Shri Vasudeo Gurunath Kulkarni, Ex-Police Head Constable, in the Court of the Civil Judge, (S.D.), Bijapur for setting aside the order of Govt. dated the 27th September 1951 dismissing him from the police force; and for reinstatement in service; and arrears of pay. The suit is defensible on technical grounds as well as on merits and sanction may be accorded to its defence on the lines of the appended brief.

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Sol. (M.) Secy 10/7

Secy (H.D) 8/13.7.53

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10.7.53.

No. 15063/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 15th July 1953.

Subject:- Bijapur Civil
Suit No. 372 of 1952.

MEMORANDUM:

The District Government Pleader, Bijapur is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief, a typed copy of which is sent herewith in advance.

Papers of the case in two files received from the Collector accompany.

for Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur

HSP/8/6

Submitted for signature
14/7

GRLD No 21410/E Dt 24/10/53
has been sent to the Govt 24/10/53
kgs
24/10

IN THE COURT OF THE CIVIL JUDGE, 13 1/4
SENIOR DIVISION, BIJAPUR.

Civil Suit No. 372 of 1952.

(1) Vasudev Gurunath Kulkarni. Plaintiff.

Vs.

(2) The State of Bombay. Defendant.

Herein the defendant by his written statement states as follows :-

1. The defendant denies the plaintiff's claim in toto.

2. The plaintiff is not entitled to any of the reliefs prayed for by him.

3. This suit ought to be dismissed for want of notice as required by section 161(2) of the Bombay Police Act 1951 (which is the same as section 80(4) of the Bombay District Police Act 1890).

4. This suit ought to be dismissed in view of section 161(1) of the Bombay Police Act 1951 (which is the same as section 80(3) of the District Police Act of 1890) as the suit is filed more than 6 months after the date of theorder of the Government and service of the order on the plaintiff on 10-10-1951 by the District Superintendent of Police.

5. Every person who is a memberof the Civil Service of a State or holds a Civil post under the State holds offic during the pleasure of Government and is liable to be dismissed at any time. The plaintiff has therefore no right to bring a suit to contest the order of the Government dated 27-9-1951 dismissing him from service or to seek re-instatement or claim arrears of pay.

6. The plaintiff has no cause of action and the allegation in para 18 of the plaint to the contrary is not correct

7. The order of the Government is perfectly legal and valid. The order does not violate Article 311 of the Constitution of India. The order is not contrary to the spirit of Article 20 of the Constitution of India.

The order is not perverse nor vindictive nor contrary to the principles of equity, natural justice and good conscience. The order is not ultravires nor void nor inoperative. All the allegations and contentions of the plaintiff to the contrary as made by him in the plaint are not correct and are denied.

8. Departmental proceedings against a Government servant are to be concluded as soon as possible after the case against him is decided in the first court. If on appeal the decision of the first Court is modified fresh departmental proceedings may be re-opened. The departmental proceedings against the plaintiff which resulted in his dismissal under the order of the District Superintendent of Police dated 12-6-1947, were set aside at the instance of the Government as the proceedings were not properly held. Fresh proceedings were thereafter initiated against the plaintiff in September 1950. The plaintiff's contention that the first proceedings should have been reopened in view of his acquittal has therefore no substance in it.

9. The fresh departmental enquiry held under the orders of the Government against the plaintiff was on a charge of rendering himself unfit for further retention in the Police Department. The departmental enquiry was held in accordance with the rules, and by giving all opportunities to the plaintiff to defend himself. There was legal evidence which the Government thought fit to accept and which Government considered was adequate for holding the charge proved. The departmental enquiry was held bonafide and conducted and concluded with no consideration other than the merits of the case. The order of the Government thus is not liable to be revised in Civil Court and therefore the plaintiff's suit is not maintainable in the Civil Court.

10. Thecontentions of the plaintiff that he was honourably acquitted and that he had been involved in the offence without any reasonable cause and that he was innocent are not

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correct and are denied. The plaintiff was acquitted on a benefit of doubt.

11. The allegations of the plaintiff in para 10 of the plaint to the effect that "it appears that ..... described below" are not correct and are denied. The allegation in that para styling the order as illegal order also is not correct. The allegation in para 11 of the plaint to the effect that "but it appears that for reasons best known to them .....the whole thing was buried." is not correct and is denied.

12. As stated by the plaintiff in para 11 of the plaint the Deputy S.P., Bagalkot gave a full hearing and held a full enquiryin respect of charge dated 5-9-1950. The departmental enquiry was held at the direction of the State Government. The Government issued a show cause notice to the plaintiff and considered the cause shown by the plaintiff and held that the charge was proved against the plaintiff on the legal evidence on record. The finding and the conclusions reached by the State Government cannot be enquired into by the Civil Court dn their merits.

13. The allegation of the plaintiff in para 14 of the plaint that he prayed for personal interview is not correct and is denied. He had requested Government in his application dated 26-7-1951 that he may be allowed to represent his case througha pleader which however is not permissible under the Rules and could not therefore be acceeded to.

14. The plaintiff's suit and claim for the reliefs prayed for by him are not maintainable and tenable.

15. The allegations of the plaintiff in his plaint which are inconsistent with or contrary to what has been stated in this written statement are not correct and are denied.

On these grounds among others, it is submitted that the plaintiff's suit be dismissed with costs.

Assistant Government Pleader,
Bijapur.

Herein I, J.R.Desai (Asst.) Government Pleader, Bijapur, hereby declare that what is stated in paras 1 to 15 above is true on information received and believed to be true signed in Bijapur on the day of 1953.

Assistant Government Pleader,
Bijapur.

cks/3.8.

C.S.No.372 of 1952.

Issues. Exh.No.

(1) Is the order of the Government dated 27-9-1951 ultra vires, illegal and void ?

(2) Does defendant prove that the suit is not maintainable in the Civil Court as contended ?

(3) Is the suit barred under Sec.161(1) of the Bombay Police Act and under section 80(3) of the D.P.Act ?

(4) Is the suit bad for want of notice under section 161(2) of the D.P.Act or under Sec.84 of D.P.Act ?

(5) Is plff entitled to arrears of pay and interest ?

(6) Is plff entitled to get the order of dismissal set aside

(7) Is he entitled to declaration sought and the injunction claimed ?

(8) What order ?

Sd. M.H.Kazi.

Civil Judge(Sr.Dn.

Suits :

Bijapur.

For setting aside the order of Government, dated the 27th September 1951, dismissing him from the Police force; for reinstatement in service, and arrears of pay. A

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GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 21410/E.

Bombay Castle, 22nd October 1953.

Letter from the Inspector-General of Police, Poona, No. 52, dated the 17th January 1953—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

A IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT No. 372 OF 1952.
Vasudeo Gurunath Kulkarni ... ... Plaintiff ;
versus
The State of Bombay ... ... Defendant. B

Memorandum to the District Government Pleader, Bijapur, No. 15063/E, dated the 15th July 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

Original for E

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[P.T.O.

To

*The Home Department,
*The Inspector General of Police, Poona,
*The Deputy Inspector General of Police, Southern Range, Belgaum,
*The District Superintendent of Police, Bijapur,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1953.

Copy forwarded for information and guidance to

Subject after issue
File in S. Bijapur/5-3 (Mud)
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S. S. Del
24/3

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BIJAPUR CIVIL SUIT NO. 372 OF 1952.

Chronological Statement of Facts.

This is a suit in *forma pauperis* filed by Shri Vasudeo Gurunath Kulkarni ex-Police Head Constable in the Court of the Civil Judge, Senior Division, Bijapur, for setting aside the order of dismissal passed by Government on the 27th September 1951; for reinstatement in service, arrears of pay amounting to Rs. 2,711-6-0 and costs.

2. In January 1946, the plaintiff was attached to the Kerur Police Station in the Badami Taluka of the Bijapur District as a Police Head Constable. While he was thus serving at Kerur, the plaintiff along with two others were prosecuted in the Court of the Resident Magistrate, First Class, Bagalkot, in Criminal Case No. 115 of 1946 for offences under sections 161 and 342 read with section 34 of the Indian Penal Code, and on the 7th April 1946 plaintiff was convicted and sentenced to 3 months rigorous imprisonment and to pay a fine of Rs. 100.

3. On the basis of the conviction of the plaintiff he was charge-sheeted on 2nd May 1947 and in the Departmental inquiry that followed, was found to be guilty of misconduct and on 12th June 1947 was dismissed from Government service by the District Superintendent of Police, Bijapur.

4. The plaintiff who had in the meantime preferred an appeal to the Additional Sessions Judge, Bijapur, being Criminal Appeal No. 17 of 1947 against the order of conviction and fine passed by the Resident Magistrate, First Class, Bagalkot, dated the 7th April 1947, was on the 21st October 1947 acquitted and the sentence passed against him was set aside.

5. On the 27th October 1947 the plaintiff requested the District Superintendent of Police, Bijapur, for reopening the departmental proceedings in view of his acquittal. This request was however rejected. The plaintiff thereafter preferred successively appeal to the Deputy Inspector General of Police, Southern Range, Belgaum, the Inspector General of Police, Bombay State, and also to Government, but they were all rejected.

6. In May 1950 plaintiff gave a notice of suit under section 80 of the Civil Procedure Code alleging therein that the dismissal was wrongful as a "show cause notice" was not given to him before the order of dismissal was passed.

7. On 22nd May 1950 Government in Home Department, letter No. SE 153/210-G, directed the Inspector General of Police, Bombay State, to ascertain whether a "show cause notice" was served on the plaintiff before the order of dismissal was passed and in case it was not served, to cancel the departmental proceedings and to serve a show cause notice treating him as under suspension with effect from the date of his dismissal from the police force. After the necessary

inquiry the Inspector General of Police directed the District Superintendent of Police, Bijapur, to hold fresh departmental proceedings. The plaintiff was therefore reinstated in service on the 6th July 1950 and placed under suspension for holding fresh departmental proceedings.

8. On 5th September 1950 a fresh charge was accordingly framed against the plaintiff. On 6th September 1950 the plaintiff was appraised of his charge and he put in a written statement in his defence on 7th September 1950. The Deputy Superintendent of Police, Bijapur, who conducted the departmental inquiry held that the charge of misconduct against the plaintiff was not proved and recommended that the plaintiff may be exonerated of the same. This view was accepted by the District Superintendent of Police, Bijapur, and he recommended that the plaintiff be reinstated in service. The Deputy Inspector General of Police, Southern Range, and also the Inspector General of Police supported the recommendations and solicited the orders of Government.

9. Government did not accept these recommendations as it considered that the charge of grave misconduct was proved and on the 29th June 1951 in Home Department, No. S. 153/210-4, a notice was issued to the plaintiff under the signature of the Secretary to Government, Home Department, to show cause within fifteen days of the receipt thereof as to why he should not be dismissed from the police force. A copy of the summing up of the case by the Deputy Superintendent of Police, Southern Division, Bagalkot, was also forwarded to the plaintiff along with the notice.

10. On the 25th July 1951, the plaintiff forwarded his written statement to Government. On 27th September 1951 Government by Home Department letter No. S. 153/210, was pleased to direct that the plaintiff should be dismissed from the Bijapur district police force with effect from the date of service of the order on him. Accordingly the plaintiff was dismissed with effect from the 10th October 1951 under the order of the District Superintendent of Police, Belgaum, dated the 3rd October 1951.

11. On 30th November 1951 plaintiff gave notice of suit under section 80 of the Civil Procedure Code and filed this suit on 19th April 1952 in the Court of the Civil Judge, Senior Division, Bijapur, for the reliefs stated above.

12. The main contentions of the plaintiff in this suit are:

(1) that he was honourably acquitted by the Additional Sessions Judge, Bijapur, on 21st October 1947 of the charge which was the subject matter of the departmental inquiry and that in view of the acquittal his dismissal is illegal;

(2) that the departmental proceedings taken against him on identical charges were in violation of the provisions of article 20 of the Constitution;

(3) that the order of dismissal passed by Government on 27th September 1951 is in violation of the

2357

provisions of article 311 (3) of the Constitution inasmuch as the officers competent to pass the order had found him innocent and recommended for his reinstatement; and

(4) that he was not granted personal interview before the order of dismissal was passed against him by Government.

Grounds of Defence.

Notice.—The plaintiff has given a notice of suit under section 80 of the Civil Procedure Code. He has however not given a notice as required by section 161(2) of the Bombay Police Act, 1951. A separate notice of suit under the latter provision is absolutely essential and the notice under section 80 of the Civil Procedure Code alone is not enough. In the absence of such notice the suit is not maintainable and the court should be requested to dismiss the suit.

2. *Limitation.*—The plaintiff challenges in this suit the order of dismissal from Government service passed against him by Government on 27th September 1951, and served on him by the District Superintendent of Police on 10th October 1951. The suit was filed on 19th April 1952. Section 80(3) of the Bombay District Police Act, 1951, 1890 and section 161 (1) of the Bombay Police Act, 1951, explicitely provide that a suit shall not be entertained by a court or shall be dismissed if instituted more than six months after the date of the act complained of. Plaintiff is not entitled to the benefit of section 15(3) of the Limitation Act. [*see* section 29 (2)]. It should therefore be urged that the suit filed on 19th April 1952 is clearly barred by time.

3. *No cause of action.*—Under clause (1) of article 310 of the Constitution every person who is a member of the civil service of a State or holds any civil post under a State, holds office during the pleasure of Government and is liable to dismissal at any time. The plaintiff has therefore no right to bring a suit to contest the order of Government, dated the 27th September 1951, dismissing him from service, or to seek reinstatement, or to claim arrears of pay. (Cf. *Krishnaji* v. *Secretary of State,* 39 B. L. R. 699; and *High Commissioner for India and Pakistan* v. *I. M. Lall,* 75 I. A. 225; *Province of Bombay* v. *Madhukar Ganpat Narlekar,* 53 B. L. R. 754).

4. *Merits.*—The plaintiff has no case on merits. His office falls under the category of subordinate ranks of the police force and the conditions of his service were determined by the Bombay District Police Act, 1890. The plaintiff was dimissed by Government by Home Department letter No. S. 153/210, dated 27th September 1951, in virtue of the powers vesting in them under section 29(1) of the Act and the order of dismissal was communicated to him by the District Superintendent of Police on 3rd October 1951. The rules Governing the disciplinary enquiries into the misconduct of police officers are given in paragraph 1278 and 1284 of Volume III of the Bombay Police Manual. The facts of this case show that the procedure laid in these paragraphs was properly followed. After the first departmental inquiry was quashed a fresh inquiry

was held at the direction of Government. In this inquiry a distinct charge was framed against the plaintiff on 5th September 1950; he was informed of the charge so framed against him, and he was given all reasonable facilities for his defence. He has accordingly filed a written statement on 7th September 1950. A show cause notice against the proposed dismissal was issued to the plaintiff by Government. It should therefore be contended that the order of dismissal was made after due observance of the Rules and procedure laid down for departmental inquiry and plaintiff has consequently no cause of action for this suit.

5. The first contention of the plaintiff in this suit is that he was honourably acquitted on 21st October 1947 in the appeal before the Additional Sessions Judge, Bijapur, of the charge which was the subject matter of inquiry and in accordance with rule 1278 (14) of the Bombay Police Manual, Part III, the proceedings should have been reopened and he should have been reinstated in his former position. It should be denied that plaintiff was honourably acquitted of the charge. It should be stated that the plaintiff (accused No. 3 in Criminal Case No. 115 of 1946 before the Resident Magistrate, First Class, Bagalkot) was acquitted on a benefit of doubt. (*See* the remarks of the learned Additional Sessions Judge in paragraph 37 of the judgment dated the 21st October 1947). Rule 1278 (14) *inter alia* provides that "departmental proceedings against a Government servant should be concluded, as soon as possible, after the case against him is decided in the first court. If, on appeal, the decision of the first court is modified, the departmental proceedings may be reopened and action taken under Bombay Civil Services Rule 152". In the plaintiff's case the departmental proceedings taken against him in April and May 1947 which resulted in his dismissal under the order of the District Superintendent of Police, Bijapur, dated the 12th June 1947, were set aside at the instance of Government as the proceedings were not properly held. Fresh proceedings were thereafter initiated against the plaintiff in September 1950 as a result of which plaintiff has been dismissed from Government service with effect from 10th October 1950. The plaintiff's contention that the first proceedings should have been reopened in view of his acquittal has therefore no substance.

6. The next contention of the plaintiff is that the departmental proceedings taken against him on charges identical to those of which he was acquitted by the Court were in violation of the provisions of article 20 of the Constitution. This contention is not correct. Article 20 (2) is merely a reproduction of section 403 of the Criminal Procedure Code and section 26 of the General Clauses Act, 1897. The word prosecution in article 20 (2) means a judicial proceeding before a court or a legal tribunal. It has no reference to departmental or disciplinary proceedings taken for inflicting departmental penalty or punishment on an officer of Government for misconduct. (*See Suresh Chandra* v. *Himangshu*, 55 Cal. W. N. p. 605 at p. 611).

7. The next contention of the plaintiff is that the order of dismissal passed by Government violates the

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provisions of article 311 (3) of the Constitution inasmuch as the officers competent to pass the order of dismissal, including the Inspector General of Police, Bombay State, had found him innocent of the charge and recommended for his reinstatement. This contention is entirely wrong and should be denied. Clause (1) of article 311 provides that no person who is a member of the civil service of a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Clause (2) thereof provides that no such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the Action proposed to be taken in regard to him. Clause (3) which follows provides that if any question arises whether it is reasonably practicable to give any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person, or to reduce him in rank as the case may be shall be final. Thus all what article 311 (3) requires is that before an order of dismissal is passed on an officer of Government the question whether or not any opportunity of showing cause could reasonably be given, shall be decided by the authority competent to dismiss. It should be stated that this clause has no application to the plaintiff's case. Under section 29 of the Bombay District Police Act, 1890, the authorities competent to dismiss the plaintiff were the District Superintendent of Police, the Deputy Inspector General of Police, Southern Range, Belgaum, the Inspector General of Police and the State Government. The State Government have concurrent powers along with these officers and have also appeliate and revisionary officers. In this case the departmental inquiry was held at the direction of the State Government and the final order of dismissal was also passed by it after a show cause notice was given to the plaintiff, by Government. As stated above Government being the authority competent to dismiss the plaintiff and it having decided that a show cause notice should be issued to the plaintiff, the provisions of Article 311 (2) are fulfilled and are in no way violated. The allegations of vindictiveness and oppressiveness made against Government are entirely out of taste and should be categorically denied. The District Superintendent of Police, Bijapur, acted as an Inquiry Officer. The Deputy Inspector General of Police, Southern Division, and the District Government Pleader, Bombay State, have only forwarded the report of the inquiry conducted by the District Superintendent of Police to Government. It is no doubt true that the District Superintendent of Police was of opinion that the plaintiff was not guilty of the charge and the Deputy Inspector General of Police and the Inspector General of Police, Bombay State, had recommended that the plaintiff be reinstated in service. But it is now well settled that the authority competent to dismiss is not bound to draw the same inference or to come to the same conclusion as the Enquiry Officer, and the Court has no power to examine the correctness of the inference so drawn or the conclusion so reached. (*See Secretary of State* v. *I. M. Lall*, 75 I. A. 225). Therefore the conclusions reached by the State Government that the charge of misconduct was proved against the plaintiff cannot be inquired into by the Civil Court on its merits.

60

8. The next contention of the plaintiff is that he was not given a personal hearing by Government before the order of dismissal was passed against him. This allegation is wrong and should be denied. The plaintiff in his application dated 26th July 1951 had requested Government that he may be allowed to represent his case through a pleader. It may be stated that appearances of pleader in departmental proceedings is not permissible under rule 545 (17) of the Police Manual (1950) Vol. I. The request of the plaintiff could not therefore be acceeded to. It should however be stated that in January 1950 the plaintiff had been heard by the Parliamentary Secretary, Home Department.

9. As regards plaintiff's claim for Rs. 2,711-6-0 on account of arrears of pay, etc., the attention of the Court should be invited to the ruling of the Privy Council in the *High Commissioner for India and Pakistan* v. *I. M. Lall*, 75 I. A. 225 and the Bombay High Court decision in the *Province of Bombay* v. *Madhukar Ganpat Nerlekar*, 53 Bom. L. R. 754. It should be stated that the only remedy for obtaining such relief is by way of a departmental appeal or representation and not by way of a suit.

For all these reasons it should be urged that the suit fails and must be dismissed with costs.

S. Bijapur/53
(New)
24/1/57

No. 899 of 1954.
Office of the D.G.P.Bijapur.
22-7-1954.

To

The Remembrancer of Legal Affairs,

Secretariat Fort Bombay No.1.

Subject:- Bijapur Civil Suit No.372/52.

Sir,

In forwarding herewith a copy of the application presented by Shrimati Padmawati to the Court with the copy of the order passed ~~thereon~~ by the Court below it I have the honour to state as under:-

2. The issues in this case were ~~framed~~ forwarded to you under this Office No. 1337 of 12-10-1953.

It may be seen therefrom that the suit does not involve a point as to the validity of any Act,Ordinance or Regulation or of any provision contained in any of them.

I am, therefore, of opinion that the application made by Shrimati Padmavati should be opposed.

3. I have forwarded herewith a draft of the objections to be put in and I request you to return to me the objections to be put in as revised or approved of by you.

The date fixed for putting in objections is 12-8-1954.

Yours faithfully,

J R Desai

Asstt.Govt.Pleader.Bijapur.

Submitted for orders

Sol (Nil) The draft sent by the D.G.P. is not very happy. A new draft is prepared. Copies of the same may be sent to the D.G.P.

Civil Suit No. 372 of 1952. 29/67

In the Court of the Civil Judge,Sr.Dn.Bijapur:

1. Vasudev Gurunath Kulkarni, age 38,
resident of Ahirsang District Bijapur. Plff.

Vs.

The State of Bombay ..: Defendant.

Shrimati Padmavatibai w/o Vasudevrao Kulkarni,
age 30, household work of Bijapur. applicant.

Herein the applicant begs to submit as follows:-

1. Herein the applicant begs to submit as follows :-

1. After the filing of this suit the plaintiff has been temporarily insane since a couple of months. The judicial Magistrate, First Class, Bijapur, held an inquiry under Section 14 of the Indian Lunacy Act of 1912, about an order of reception in respect of the plaintiff. He enquired the matter and has passed an order on 28-6-1954 directing that the plff be detained in mental Hospital Dharwar. The certified copy of the said order is produced herewith. In pursuance of the order the plaintiff is now in the Mental Hospital at Dharwar.

2. In view of this temporary Lunacy by which the plaintiff is attacked, this application is filed by the applicant for the appointment of a guardian-ad-litem or the next friend for the plaintiff.

3. The applicant is wife of the plaintiff and she is looking to his interests. There is no conflict of interest between her and the plaintiff.

4. It is therefore, prayed that the Court be pleased to appoint the applicant as the next friend and allow the formal amendment as under:-

In cause title of the plaint, after the words "Taluka Indi, District Bijapur, the following be added".

"Temporarily insane, by his next friend Shrimati Padmavatibai wife of Vasudevrao Kulkarni, age 30, household work of Bijapur".

II. 5. The plff has filed this suit for setting aside the order of his dismissal by the defendant or about 27-9-1951 on various grounds, the important ones being that the authority ~~is~~ viz. Dy.S.P. Bagalkot who held the Departmental Enquiry was satisfied about the innosence of the plff and recommended to D.S.P. for his reinstatement in his former position and rank and that this recommendation was accepted by the District Superintendent of Police,Bijapur and who also recommended the same to D.I.G. and further these recommendations were accepted by the D.I.G.P.S.R., Belgaum who also reported to the I.G.P., Bombay for reinstatement, finally all the findings and recommendations of the said authorities were accepted by the I.G. of Police,Bombay who reported to the Government for reinstatement, but that the Government illegally refused to accept the same and passed an order of dismissal, which is contrary to the provisions of the constitution of India, and illegal and void, and order is ultravires.

6. The facts mentioned herein about the Departmental proceedings are set out in Paras 12 to 14 of the plaint. They are not specifically denied by the defendant. They are thus admitted or deemed to have been proved.

7. Substantial question of law involving the question of constitution arises in this suit as to whether on the facts set out and for admitted and proved above, the order of dismissal by the Government is proper legal and valid. The interpretation of the constitution is necessary for the determination of this question.

8. Article 223 of the constitution of India, in invests the High Court with a power to withdraw the case, pending in a subordinate Court, which involves a substantial question of law as to the interpretation of the constitution, and decide the whole matter or only the said question of law. This Court has powers to refer the question of law under section 113 of Civil Procedure Code.

9. The applicant therefore prayed that this Court be pleased to move the Hon'able High Court of Bombay to hear the question of Law regarding the validity of the order of the Govt

dismissing the plff in the circumstances set out above and dispose of this case in conformity with the Judgment of the High Court.

Bijapur.
22-7-1954.

Sd. x x x.
Applicant.

Affidavit.

I, Shrimati Padmavatibai w/o Vasudevrao Kulkarni age 30, household work of Bijapur do hereby make an oath and state as that the contents of the above application is read over and explained to me in Kannad and that the contents of paras Nos. 1 and 3 are true to my personal knowledge and the contents of the rest of the applicatio is true to the information received by me and believed b me to be tnue.

Thus sworn this 22nd day of July 1954 at Bijapur.

Sd. x x x.
Deponent.

I know the deponent.

Sd. x x.
Identifier.

Note:- A spare copy is filed for service on the learned Govt.Pleader.

Drafted according to instructions filed in Court on 22nd July 1954.

Sd. x x x
Advocates for applicant.

ORDER.

Any body can come as the next friend of the lunatic. So, the present applicant who is the wife of the plff may conduct the suit on his behalf.

Notice to the other side in respect of other allegations made in this application.

22-7-1954.

Sd.M.H.Kazi.
Civil Judge,Sr.Dn.

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In the Court of the Civil Judge, Sr.Dn.

at Bijapur.

Civil Suit No. 372 of 1952.

(1) Vasudeo Gurunath Kulkarni ... Plff.

Vs.

(1) The State of Bombay. ... Defendant.

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Herein the Assistant Government Pleader,Bijapur, opposes the plaintiff's application dated 22-7-1954 on the following among other grounds.

(1) The contents of Para 7 of the application are not correct and are denied.

(2) There are no circumstances such as are mentioned in the proviso to Section 113 of the Code of Civil Procedure in this suit.

(3) This Court is competent to hear and decide the points indicated in the issues framed in this suit.

It is, therefore, submitted that the applicant's application may be dismissed with costs.

Date:-

Assistant Government Pleader,
Bijapur.

35 - 54

IN THE COURT OF THE CIVIL JUDGE (S.D.)

BIJAPUR.

Civil Suit No. 372 of 1952.

Vasudeo Gurunath Kulkarni .....Plaintiff.

vs.

The State of Bombay .....Defendant.

The following is the reply of the Defendant to the Plaintiff application dated the 22nd July 1954 :-

1. The application is untenable in law. It is also quite unnecessary.

2. The allegation in para 5 of the application that the Government of Bombay illegally refused to accept the recommendation of the Inspector General of Police and the lower Officers is not correct and is denied. The Government were not in law bound to accept the opinion of the lower Officers. The Government had the right to come to an independent conclusion of their own in the light of the evidence on record.

3. The contention in para 6 of the applications is not true and should be denied.

4. It is not true that substantial questions of Law involving the interpretation of the Constitution are involved in this case, as alleged in para 7 of the application.

5. The High Court has undoubtedly the powers mentioned in article 228 of the Constitution. But is is open to the Plaintiff applicant to move the High Court by a Petition for exercising those powers. The High Court will then decide if any question of Law relating to the Constitution is really involved in the case. Section 113 Civil Procedure Code is not relevant of applicable in the present context. The Plaintiff has not sought any declaration that a particular Act or a particular section of any Act is illegal or ultra vires.

6. The Civil Court has no power to transfer the case

to..

to the High Court under Article 228 of the Constitution f r deciding the question of the validity of the Order of dismissal passed by the Government. That question may be decided by this Court. If the decision is against plaintiff he will have remedies by way of Appeals.

7. The present application being improper, unnecessary and untenable the same may be dismissed with costs.

Assistant Government Pleader,
Bijapur.

I, Assistant Government Pleader, Bijapur do hereby declare that what is stated in paragraphs 1 to 7 above is true according to the information received and believed to be true.

This verification is made at on the day of July 1954.

Assistant Government Pleader,
Bijapur.

BM.
30.7.

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Legal Department.

Solicitor (M.L.)

Suit No.372 of 1952 in the Court of Civil Judge, Senior Division at Bijapur.

The plff. in the above suit was a police head constable serving in the Bijapur District. He was prosecuted on a charge of having attempted to receive a bribe but was acquitted in the criminal case. Several departmental proceedings were held against him in respect of the same charge. Ultimately Govt. in the Home Department, by its order contained in letter No.S/153/210 dated 27-9-1951, dismissed him from service. The plff. has brought this suit for a declaration that the said order of his dismissal is void and ultra vires, a mandatory injunction directing Govt. to reinstate him in service, and recovery of Rs.2711-6-0 for arrears of pay. The plaint in the suit is at slip A. The plff. alleges that the order made by Govt. dismissing him from service violates articles 20, 311(3) and 320(3) of the Constitution of India.

2. The suit is defended on the lines of the brief at slip B. The written statement filed on behalf of Govt. is at slip C.

3. During the pendency of the suit the plff. became insane temporarily. When he was insane his wife made the application at slip D that the Civil Judge should make a reference to the High Court under section 113 of the Civil Procedure Code as the case involves important questions of interpretation of articles 20, 311(3) and 320(3) of the Constitution. The application was opposed on behalf of Govt. and was rejected.

4. The plff. has now made a Spl. Civil Appln. to the High Court under article 228 of the Constitution to withdraw the suit from the Court of the Civil Judge, Senior Division, and dispose of the case itself or to

determine the questions of law as to the interpretation of articles 20, 311(3) and 320(3) of the Constitution and to return the case to the lower court with a copy of its judgment on the said questions. The application is at Slip E

5. The above said Spl.Civil application made by the plff. to the High Court under article 228 of the Constitution will have to be opposed on behalf of Govt. The Govt. Pleader, High Court, may be instructed to oppose the same. It may be considered whether the Advocate General or any counsel should be engaged on behalf of Govt. to argue the case at the hearing of the application.

Under
Sd/-
15-12-54

The application may be opposed.
The matter may be submitted
to Govt-Pleader 9(-Dec
Whether anyone necessary to
engage the Advocate General Govt-
they may be left to the Govt-Pleader's
discretion. He may asked to engage
Adv. General if he thinks it desirable
to do so

Secy HD

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S/17/12/54

GSP 16/12

No. 28539,
dt-16-12-5
(with bill

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S Bij 9/53
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L.D. JAN 1955

No. 144
Office of the
Government Pleader, High Court.
Bombay. D/ 6.1.1955

From:- Shri H. M. Choksi, B.A.(Hons).LL.B.,
GOVERNMENT PLEADER, HIGH COURT.

To'

The Remembrancer of Legal Affairs, Bombay.

D 97
E
8/1/55

Subject:- Special Civil Application No. 2673 of 1954 -
Vasudev Gurunath Kulkarni.
V/S
The State of Bombay.
--

Sir,

With reference to your letter No. 28823/E dated 20th Dec. 1954, on the above subject, I have the honour to inform you that the case noted above was heard at the time of admission on 13-12-1954 when the following order was passed:-

" Rejected. Court below to expedite the hearing of the suits."

Yours faithfully,

H. M. Choksi

For Government Pleader,
High Court.

No. 145

Copy forwarded with compliments to the Collector of Bijapur for information.

Subiectul fără informații
Nu a decis asupra fondului
necesar.
-File în S. Bij. 9/53

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16/2

S. Bij 7/52
17/1

Received on 8-12-1952.
Registered on 11-12-1952.
Decided on 11-7-1955.
Duration 2 years 8 months.

In the Court of Civil Judge (Sr.Dn., Bijapur.
At Bijapur. Exh. 80.
Spl. Reg. Civil Suit No. 372 of 1952.

Pleaders.

Shri A.V.Albal.

Shri Vasudeo Gurnath Kulkarni
of Bijapur .... Plaintiff.

against.

The Govt.Pleader, Bijapur.

The State of Bombay. .... Defendant.

Claim Rs. 2916-0-0

The plaintiff sues to obtain the declaration that the order passed on 27-9-1951 as void, ultravires and against the princi les of natural justice, equity and good conscience and also as perverse and vindictive. He further sues to obtain an injunction against the defendant ordering it to reinstate the former to his former post. He also sues to recover Rs. 2711-6-0 in respect of the arrears of his pay from the defendant together with interest and costs. The facts of the case as stated in the plaint may briefly be summariesed as below:-

The plaintiff was appointed as an unarmed Constable at Bijapur on 15-2-1934 and he was working as such with the defendant upto 1945 and then as head constable upto January 1946 at Karur. He was involved in a criminal case by one Sayyad Ayub under Secs. 342 and 161 I.P.C. along with two others and was convicted by the Resident Magistrate, Bagalkot in Cr.Case No. 115/1946 on 7-4-1947

to undergo the R.I. for 3 months and pay a fine of Rs. 100/-. Against this order of conviction, the plaintiff preferred the Cri. Appeal No. 17/1947 to the District Judge and the former was acquitted by the Addl. Sessions Judge on 21-10-1947, honourably. After the decision of the said case No.115/1946 by the Magistrate, the head of the Police department framed a departmental charge for the dismissal of the plaintiff from service on 2-8-1947. The inquiry was held by the Dy. S.P. inspite of plaintiff's request to suspend the inquiry until the disposal of the said criminal appeal No. 17/1947, without giving any opportunity to the plaintiff and he was thus dismissed from service on 12-6-1947. The said order was contrary to law and the rules of the department.

The plaintiff made the representations after the decision of the said appeal, to reopen the proceeding and reinstate the plaintiff to his former post but his request was turned down. He then served the notice of suit under Sec.80 C.P.C. to the defendant. Then the D.S.P. informed the plaintiff that the latter was reinstated in service from 13-6-1947 (as the former order of dismissal had come in force on 12-6-1947). Accordingly, the plaintiff joined his duty on 2-6-1950 at Bagalkot after receiving D.S.P's order of 30-5-1950. Immediately after joining the duty, a telegram was sent for relieving the plaintiff from duties from 3-6-1950. But again on 4-7-1950. the D.S.P. issued a fresh order to the effect that the plaintiff was reinstated from 13-6-1947. Then the plaintiff once again joined his duties at Bagalkot on 6-7-1950. As the defendant wanted to be vindictive and oppressive against the plaintiff a charge was framed against him by the Dy. S.P. on 6-9-1950 to the effect that the plaintiff attempted to obtain illegal gratification of Rs. 5/- from Ayub etc. The plaintiff then filed his reply on 7-9-1950 and the Dy.

43 48

S.P. after full hearing exonerated the plaintiff of the said charge and reported accordingly to the D.S.P. Then the D.S.P. the D.I.G. and I.G. accepted the report of the Dy.S.P. as correct and a report was accordingly sent to the Government for passing the orders of reinstatement. But the defendant issued a notice to the plaintiff to show cause within 15 days as to why he should not be dismissed from Police Force etc.

The plaintiff showed cause in writing on 25-7-51 and prayed for personal interview. But the interview was not granted. The defendant then passed the order on 27-9-1951 stating that the charge of grave misconduct had been proved against the plaintiff and dismissed him from service.The said order was communicated to the plaintiff by the D.S.P. on 10-10-1951. The plaintiff was entitled to claim the balance of Rs. 2711-6-0 as the arrears of his pay under the P.M. Rule No. 1278(5)(a) part III as he was honourably acquitted and as he was entitled to full pay and allowances, which were received by him prior to his dismissal. He is also claiming the setting aside the order of his dismissal, passed on 27-9-1951 on the ground that the said order violated the Constitution of India in as much as Article 311 (3) is voilated as the decision of the Authority empowered to dismiss or to remove the plaintiff from service is final. He asserts that the order of dismissal, passed against him is contrary to the spirit of Art. 20 of the Constitution of India and as such requires to be set aside. He further alleges that the said order, passed by the defendant is perverse, vindictive and contrary to the principles of equity, natural justice and good conscience and thus ultravires, void and inoperative. Hence the suit for setting aside the said order and reinstating him to his former post and granting him the balance of the arrears of his pay, costs etc. after serving notice under Sec. 80 of the C.P.C.

The defendant in its w.s. Ex .7 contended that the suit was not maintenable for want of notice under Sec.

161 (2) of the Bombay Police Act (or Sec. 80 of the Bombay D.P.Act) and that it was barred by time as it had not been filed within 6 months from 10-10-1951. It stated that the plaintiff who was holding the post under the state was doing so at the pleasure of the Govt. and as such was liable to be dismissed at any time and that the plaintiff had no right to claim reinstatement or the arrears of pay from it.It stated that its order was perfectly legal and valid and that it did not violate Art. 311 of the Constitution of India or the spirity of Art. 20 of the said Constitution. It denied all the allegations of the plaintiff in this respect. It stated that it set aside the order of dismissal passed by the D.S.P. on 12-6-1947 as the departmental proceedings were not properly held by the defendant and the fresh proceedings were therefore held against him, as he was unfit for further retention in the Police Department. It stated that the fresh departmental proceedings were held in accordance with law and rules, giving all opportunities to the plaintiff to depend himself and that it considered that the legal evidence was adequate for holding the charge proved. It stated that the Civil Court had no power to revise the order of the Government as the departmental enquiry was held bonafide and the decision was given on the merits of the case. It stated that the plaintiff had not honourably been acquitted but on a benefit of doubt. It stated that the plaintiff had requested it to permit him to argue his through a pleader but his request in that respect alone was rejected and that he never prayed for his personal interview and such a prayer was never rejected. It prayed for its costs.

The following issues were framed at Ex. 13.

Issues.

1. Is the order of the Government dated 27-9-1951 ultravires, illegal and void ?
2. Does the defendant prove that the suit is not

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maintainable in the Civil Court as contended ?

3. Is the suit barred under Sec. 161(1) of the Bombay Police Act or under Sec. 80(3) of the District Police Act.?

4. Is the suit bad for want of notice under Sec. 161(2) of the Bombay Police Act or under Sec.80(4) of the District Police Act ?

5. Is plaintiff entitled to the arrears of pay and the interest as claimed ?

6. Is plaintiff entitled to get the order of dismissal set aside ?

7. Is plaintiff entitled to get the order of dismissal set aside get the declaration sought and the injunction claimed ?

8. What order ?

My findings.

On issue No. 1. No.
" " 2. It is maintainable.Not pressed.
" " 3. No.
" " 4. No.
" " 5. No; no.
" " 6. No.
" " 7. No; no.
" " 8. as per final order.

Reasons.

Issues Nos. 1-7. The plaintiff was a Police head Constable at Kerur and he was prosecuted under Secs. 161 and 342 of I.P.C. (for attempting to take bribe and for wrongful confinement) before the Resident Magistrate, Bagalkot. He and two others were convicted by the said Magistrate on 7-4-1947. After the said decision, the Departmental proceedings were started against him by framing a charge on 2-5-1948. The plaintiff requested the D.S.P. not to hold the departmental proceedings on the ground that the former had preferred the Cr.appeal No. 17/1947 against the order of

conviction, passed by the Magistrate. But the learned D.S.P. did not heed to plaintiff's request and ordered the Dy.S.P. to complete the departmental proceedings. The Dy. S.P. accordingly completed the inquiry and the plaintiff was dismissed from service on 12-6-1947, before the said appeal No. 17-1947 was decided. The plaintiff was later acquitted in the said or appeal and he therefore made the representati to almost all of his superiors to reinstate him to his former post by cancelling the order of dismissal, passed against him on 12-6-1947. But his request was not granted by any of his superiors, Exhs. 59-61. The plaintiff then, gave notice of suit Ex. 62 to the defendant on 27-4-1950 and the latter then found that there was some irregularity of not giving show cause notice, committed by the P.S.P. or Dy. S.P. and it therefore, cancelled the order of dismissal, passed by the D.S.P. It then directed the Inspector General of Police to hold the fresh departmental inquiry according to law, Ex.51. The I.G.P. accordingly ordered the D.S.P. to reinstate the plaintiff to his former post and hold that the fresh inquiry as per defendant's directions Exhs. 52, 53 and 54. The defendant had also ordered at Ex.51 that the plaintiff should be treated as under suspension from the dateof dismissal (i.e. from 12-6-1947). The D.S.P. then reinstated the plaintiff as head constable at Bagalkot on 4-7-1950, cancelling his former order of dismissal Ex.55. The defendant through the Secretary Home Department, sent the notice, Ex. 57 to the plaintiff ordering him to show cause within 15 days why he should not be dismissed from the Police after the fresh departmental inquiry was completed. The fresh departmental inquiry was actually held by the Dy. S.P. as per directions of the D.S.P. Ex. 64. The Dy. S.P. framed the charge Ex. 46 against the plaintiff and in the said charge it was stated that the decision in the judgments of both the Courts was the evidence against him in support of the charge. The plaintiff appeared in answer to the said charge on 7-9-1950 and gave his statement before

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the Dy.S.P. at Ex. 48 and also filed his w.s. Ex.49 on the same day.

The Dy.S.P. held the departmental inquiry by reading both those judgments, Exhs. 44/2 and 44/3 mentioned in the charge and the w.s. of the plaintiff Ex.49, in evidenc recorded the statement of the plaintiff at Ex.48 and finally sent his report Ex. 44/1 to the D.S.P. holding that plaintiff' acquittal was a clear one and that the charge against the plaintiff had not been proved. The D.S.P and the Inspector General of Police agreed with the Dy.S.P. and recommended the plaintiff for reinstatement to his former post Exhs. 66 and 67. But the defendant (the Government) did not agree with the reports of those officers and found the plaintiff guilty of the charge. The defendant then served the show cause notice Ex.57 to the plaintiff through its officers as per rules and the plaintiff filed his w.s. Ex. 45 in the form of his defence to the said notice on 26-7-1951. He also sought the permission to argue his case before the Secretary Home Department or the minister with the aid of a pleader, Ex. 63 on the same date. The defendant did not permit the plaintiff to appear through a pleader and the latter did not also request the former to allow the plaintiff to argue his case personally before the Minister or Secretary Home Department as he could not probably add any thing more to his written defence Ex.45. The plaintiff was then discharged from service, in pursuance of the order passed by the defendant on 27-9-1951. The parties are not in dispute as regards all these facts.

It can be said at the outset that the plaintiff did not complain in his plaint that the Dy.S.P. who actually held the enquiry under the orders, did not give a fair opportunity to the plaintiff to explain his case or to lead his own evidence. He did not also complain in it that he did not understand the charge properly or that the nexact evidenc led against him (i.e; those 2 judgments) was not properly

brought to his notice. The Dy.S.P. had informed the plaintiff that the evidence against him, in proof of charge was the judgment of the Resident Magistrate and also that of the Appellate Court. The charge sheet also stated the said fact clearly and the plaintiff was fully aware of the evidence, led against him. He therefore, filed the w.s. Ex. 49 in reply to the said evidence by way of defence and as well as by way of argument. Thus, the plaintiff did not complain of any irregularity or illegality in the inquiry, held by the Dy. S.P. in the plaint. But the learned pleader for the plaintiff argued before me that the Dy.S.P. did not properly frame charge by pointing out the exact portions of the judgments which went against the plaintiff in proof of the charge. If this was the grievance of the plaintiff, he could have stated so in the plaint itself, so that I could have asked the defendant to answer to such a complaint. I was really surprised to hear such a defence only at the time of learned Government pleader's argument was over and when the defendant had no opportunity to meet such a case. I thus come to the conclusion that there is no substance in plaintiff's contentions of this kind and that plaintiff's learned Advocate cannot take up a defence of the present kind without the pleadings and without issues in the argument. The Dy. Sp.P. and his two superior Officers had accepted the defence of the plaintiff and recommended the plaintiff for his reinstatement. The plaintiff himself wanted to take advantage of the reports of those three Officers and he therefore, did not complain of any irregularity in the departmental inquiry in his plaint. The learned Advocate further argued that the defendant (the Government) was not justified in disagreeing with the opinions of three responsible Officers without any additional evidence before it. If the defendant had looked into any additional evidence behind the back of the plaintiff, the said act itself would have been treated as an irregularity or illegality.

L19 194

But the defendant did not do so. It perused only two judgments, mentioned in the charge and the statements of the plaintiff Exs. 48 and 49 and came to the conclusion that the charge against the plaintiff was proved. As the defendant was the final authority in respect of the said departmental enquiry, it can come to any decision and such a decision is binding on the plaintiff. The Civil Courts have no power to question the defendant why it came to a particular decision disagreeing with three officials, as they (the civil Courts) are not the appellate or Revising authorities of the departmental inquiries. The Civil Courts will interfere with the decisions of the Domestic Tribunals only when there is some illegality, material irregularity, malice etc. in the proceedings of the Domestic Tribunals and not otherwise.

It was held in Ramji vs. Haranji 37 B.L.R. 261 that if the requirements of natural justice had been complied with, the Court of law would not act as a court of Appeal in reference to a decision of a domestic Tribunal. Their Lordships of our High Court clearly laid down the principles of law in such cases in the Province of Bombay vs. Madhukar 53 B.L.R.754 and decided that so long a domestic Tribunal acted honestly, in good faith, with a sense of responsibility and in consonance with its own rules, its decision could not be questioned on the ground of the breach of rules of natural justice, even. The plaintiff did not make any allegation of the said kind in his plaint but the learned Advocate for the plaintiff argued that passing of the dismissal order against the plaintiff, disagreeing with those three high officials would amount to vindictiveness of defendant. But I am unable to agree with the learned Advocate in this respect. The defendant was within its legal rights to differ from its subordinates and forms its own opinion from the evidence on record. This Court has, therefore, no power or right to revise the said order and come to a different conclusion, without any material before it.The learned Advocate for the

for the plaintiff further argued that the decision of the defendant had not been based on the legal evidence. But he did not point out any material in support of this argument. The charge clearly stated what evidence was standing against the plaintiff and the defendant came to the conclusion by perusing only that evidence. I am at a loss to know how the learned Advocate could say that the decision of the defendant was not based on the legal evidence. The learned Advocate argued that those 2 judgments especially Exhs. 44/3 rather supported the plaintiff. It may be so in the opinion of the plaintiff but the defendant considered that thos judgments were sufficient to prove the charge against theplaintiff. The Civil Courts have no right to say that the conclusion, drawn by the defendant was wrong and I need not therefore attempt to read those judgments and form my own opinion.

The learned Advocate for the plaintiff next argued that the Rules 545 and 546 of Bombay Police Manual would not apply to the present case as the learned Sessions Judge did not acquit the plaintiff by giving the benefit of doubt. He further argued that the defendant was wrong to form such an opinion from the said judgments and pass the order of dismissal.But it can be said that the learned Advocate for the p aintiff argues the same point again in different words. I have already stated above that the Civil Courts have no right to ask the defendant to read those judgments in a particular manner and arrive at a particular decision. As long as there is no illegality or material irregularity in the decision or the procedure, the defendant was entirely within its rights to form any opinion from the evidence, placed before it. There is no departure from the provisions of any of those two rules (R.. 545 and 546 of B.P.M). The learned Advocate for the plaintiff next referred to Rule 545(7) and argued that it was the duty of the defendant to cite the witnesses and record their evidence in the presence

of the plaintiff in proof of the charge against the plaintiff. When the defendant considered that those two judgments only were sufficient to prove the charge, there was no necessity for the defendant t recall some of the witnesses, who had been examined before the learned Magistrate, in proof of the charge. The plaintiff himself could have examined his own witness to prove his innocence, if necessary.

The learned pleader for the plaintiff next argued that no reasonable opportunity was given to the plaintiff to explain his case properly in response to the notice, Ex. 57, with the aid of a pleader as he (plff) could not understand the real sense of the judgments completely. It is true that the plaintiff was not permitted to appear through a pleader before the Secretary Revenue Department or the Minister. But it was not binding on the defendant under the rules, to allow the plaintiff to argue his case with the aid of a pleader before the Hon'ble Minister or the learned Secretary Revenue Department though it would have been very fair to grant the said request of the plaintiff. Rule 545(17) of Bombay Police Manual gave the discretion to the defendant to reject plaintiff's request, made in this connection and it cannot therefore, be said that the defendant committed any illegality or irregularity in the procedure. The plaintiff had explained his case in writing in the form of an argument, probably in consultation with his legal advisers and he, therefore, did not again deem it necessary to seek the personal interview with the Hon'ble Minister, after his request to engage the pleader, Ex. 62 was rejected. It is to be noted that the defendant did not pass the order immediately after the expiry of 15 days from the date of service of notice, Ex. 57. The plaintiff had sufficient time and opportunity to explain his case even personally(if he so desired), prior to the passing of the final orders by the defendant.

It can, therefore be paid that the plaintiff was not deprived of a reasonable opportunity to defend himself.

The learned Advocate for the plaintiff next argued that under Art. 311 , read with Art. 20 of the Constitution, it was incumbent on the part of the defendant to issue a separate notice to the plaintiff before discharging him from service. But I am unable to agree with the learned Advocate in this respect also. Ex. 57 is the show cause notice, given to the plaintiff before discharging him from the service and the plaintiff has also given his reply to the said notice, vide Ex. 57 at Ex.49. The said notice can be regarded as the notice given under Art. 311 of the Constitution, though such a direction is given in the Police Manual also. Thus, there was a regular departmental inquiry held in the present case and there was no irregularity or illegality in the procedure or malice.

The defendant being the final authority to pass the orders in the said departmental inquiry, passed the orders according to law, exercising its discretion in good faith, with a sense of responsibility and in consonance with its own Rules. When the defendant arrived at a particular decision by perusing those 2 judgments and plaintiff's w.s. Ex. 49, the Civil Court cannot come to a different conclusion as a Revising authority without any material before it. There is no infringement of any fundamental right and the fair and reasonable opportunity, provided under the Rules had been given to the plaintiff. In the circumstances, I hold that the plaintiff has failed to prove the issue No.1 and he is, therefore, not entitled to the declaration and injunctions sought by him.

The learned Government Pleader did not argue on issue No.2 rightly as the Civil Court had the right to maintain the suit though it has no power to interfere with the deicision of the Domestic Tribunal in the cases of a

53 1/53

present nature. But he pressed the issues Nos. 3 and 4 by saying that the suit was not maintainable in view of the provisions of Sec. 161(1) of the Bombay Police Act or of Sec. 80(3) of the District Police Act as no notice under the said provisions had been given and as the suit had not been filed within 6 months from the date of the dismissal order. But I am unable to agree with him as the said provisions apply only when an individual wants to complain of an act done by a Government servant, while discharging his duties in his official capacity. In the present case, no such relief is sought in respect of an act done by some official of the defendant. The plaintiff has come to the Court complaining of the act, done by the defendant itself and he wants to enforce his right against the defendant. I therefore hold that the suit is not barred under the provisions of any of those two acts as they are not applicable to this suit. I accordingly record my findings on issues Nos. 3 and 4 in favour of the plaintiff but against the defendant.

The last question that has to be considered is one of the claim for the alleged balance of arrears of plaintiff's pay. The plaintiff stated in his plaint that he was entitled to get the full pay from the date of discharge to the date of reinstatement (i.e. from 12-6-1947 to 4-7-1950) He calculated his pay of that period, on the said basis as Rs. 5572/51. The defendant paid him already Rs. 2260-14-6 as per Rule No. 649 of the Police Manual and the defendant, therefore, is now claiming the balance of Rs. 2741-6-0 from the defendant under Rule No. 1278(5) a of the Police Rules. Rule 649 of P.M. is quite clear on the point in every respect and I cannot make out how the plaintiff is demanding his full pay for the said period. The learned Advocate for the plaintiff argued that the plaintiff had been acquitted honourably and as such the plaintiff was entitled to claim the full pay for the said period under sub rule (2) clause(2)

(a) of the said rule 549 itself. He further argued that under the rules, it was the D.S.P. and not the Government who could appoint or remove a Police Constable and that in the absence of any specific order from the D.S.P. about plaintiff's pay of the said period, the plaintiff was entitled to claim his full pay with allowances for the said period, under the same rule. But the learned Advocate should note that it was the defendant, who had reinstated the plaintiff to his former post, though the D.S.P. had refused to do so prior to the order of the defendant. The defendant alone was therefore, competent to pass the orders regarding plaintiff's pay also for the said period and it has accordingly passed the orders in that respect also under the said rule (549(2) specifically. The said rule gives discretion to the reinstating authority even if the acquittal were an honourable one. Thus, the plaintiff has no right to claim the full pay for the said period. The plaintiff cannot also claim the arrears of pay from the defendant by filing a suit when he was not actually on duty. The plaintiff does not challenge the correctness of the accounts, made by the departmental staff under the rules, if plaintiff's claim for full pay is disallowed. The result is that the plaintiff fails in his suit in toto.

For those reasons, I record my findings on all the issues accordingly and pass the follow-ing order, dismissing the suit with costs.

Order.

Plaintiff's suit stands dismissed. The plaintiff do pay the costs of the defendant, incurred in the suit and the costs of the C.P. stamps. He should also bear his own costs.

11-7-1955.

Sd.M.H.Kazi,

Civil Judge, Sr.Dn.,

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C.S.372 of 1952.

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION,

AT BIJAPUR.

. . .

Vasudeo Gurunath Kulkarni, Brahmin, Occupation Nil, age 38 years, resident of Ahirsang Taluka Indi Dist. Bijapur. ... Plaintiff

Vs.

.. The State of Bombay.
(The Summons to be served on the Collector (of Bijapur.)

Claim Rs. 2916/-.
For Court fees Rs.

For Jurisdiction & Pleader's fees Rs.

The above named plaintiff states as follows:-

(1) The above named plaintiff is filling this suit for setting aside the order of his dismissal of the ground of its being ultra vires as it violates the Constitution of India and as the dismissal is wrongful and void and in operative and also for his re-instatement in service as well as to get the arrears of his pa pay and allowances under the circumstances mentioned in the plaint.

(2) Plaintiff after passing his Matriculation Examination in the year 1932 was appointed as unarmed constable at Bijapur on or about 15-2-1934 and worked in that capacity in the Police Department of Bombay Government upto theyear 1945. During the interval viz

viz in 1943, he passed his Head Constable's Course at Nasik and stood 5th in about 80 students who were trained for that Course during the year.

(3) In 1945 he was appointed as Head Constable and was posted at Kerur Police Station in Badami Taluka of Bijapur District and was confirmed as Head Constable in the year 1946. In the month of January he was doing the duties of Head Constable on beat duty at Kerur Police Station. From 1934 up to 1946 his service was unblemished and his service Book will show that he was even recommend-ed for being selected to the Course of Sub-Inspectors Post.

(4) About the end of January 1946, the plaintiff was falsely incloved by one Shri Sayyad Ayub Hussain in a Criminal Case under Section 342 and 161 (wrongful confirnement and attempting to take bribe) along with P.C.Mahibub Karimsaheb and H.C.Parappa which criminal case being unmbered 115 of 1945 was tried by R.M. F.C.Bagalkot and the said Magistrate on 7-4-1947 convicted all the three accused including the plaintiff was sentenced on or about 7-4-1947 to undergo R.I. for e months and to pay a fine of ruppes hundred in default to suffer -- further R.I. for one month.

(5) Against this convition the plaintiff filed Criminal Appeal No.17 of 1947 before the Sessions Judge at Bijapur. The said Criminal Appeal was heard and decided on by the Additional Sessions Judge, Bijapur, on 21-10-47 and the plaintiff was acquitted and discharged and his fine was also remitted.

(6) The plaintiff particularly submits that the said acquittal of the plaintiff by the Additional Sessions Judge was not on account of any technical defect in the Prosecution but the judgment of acquittal will definitely show that the acquittal was what is termed " as honourable acquittal " the learned Judge who heard the appeal having

having to the conclusion that the plaintiff was not definitely involved in the offence,. Inthis ~~xxx ix x~~ way it will be seen that plaintiff was involved in the said offence without any reasobale cause and that he was quite innocent of the charge brought against him.

(7) After the conviction of the plaintiff on or abo t 7-4-1947 a Departmental charge for his dismissal from his service was framed against him on or about 2-5-1947 and the said Departmental enquiry was conducted by the Dy.S.P.Bagalkot and inspite of the fact ~~th~~ that plaintiff had preferred an appeal against his conviction and inspite of plaintiff's request that the Departmental enquiry should be held over till the decision of plaintiff's criminal appeal, the Dy.S.P. Bagalkot proceeded with the Departmental inquiry and submitted his report to the D.S.P. in or about June 1947 and without giving any opportunity to the -- plaintiff to show cause why he should not be dismisse. either before the DY.S.P. or the D.S.P. an order of dismissal from the Police Serwice was passed against the plaintiff on or about 12-6-1947. The said order was contrary to the rules and was also L$_a$w, Equity, and good conscience in as muchas an appeal from the order of conviction was still pending and also as no opportunity to hear the plaintiff was given to him.

(8) As submitted above the plaintiff be ng honourably acquitted on 21-10-1947 he made a representation in the month of November 1947 that under Rule No. 1278(14) of the Bombay Police Manual, Part III, that the previous proceedings in which he was wrongly and unlawfully dismissed should be re-opened and that he should be reinstated in his former position. Inspite of several representations madeto all the Authorities including the Honourable Home Minister and the Honourable Chief Minister, t e plaintiff's prayer to reopen

the enquiry was not granted and he remained a dismissed servant from the Police Force.

I9) When the plaintiff found that all his prayers for setting aside the order of his dismissal were not properly attended to, he served a notice of an intended suit under Section 80 of C.P.C. against Government - mentioning the cause of action as follows:-

(a) That his dismissal was wrongful and illegal as the enquiry was not reppened under the Rules.

(b) That he was entitled to damages for wrongful desmissal, and was entitled to reinstatement and also for mandatory injunction etc.

A copy of the notice was served on or about 27-4-1950 which was duly received by Government, is filed along with plaint.

(10) It appears that when this notice was received by Government, they became aware of the injustice and illegality committed to the plaintiff in passing the order of dismissal and to set the matter right it was necessary to reinstate the plaintiff in service and which the Government should have donehaving found their injstice and illegality but it will be seen that Government still wanted to persist in their wrongful and illegal act after giving a legalised fDDm totheir wrongful act as is described below:-

on receipt of plaintiff's notice under Section 80 of C.P.C.the plaintiff was informed by the D.S.P.Bijapur by his order dated 30-5-1950 that the plaintiff was reinstated in service (Police Dept). from 13-6-1947 as his former illegal order of dismissal came in force from 12-6-1947. Accordingly plaintiff joined his duty on 2-6-1950 at Bagalkot. Immediately on joining the duties on 3-6-1950, the D.S.P.Bijapur agains sent a wire that plaintiff should be relieved from duties from 3-6-1950 and that the order of I.G.P. were awaited.

(11) After this curious proceedure again on 4-7-50 the D.S.P. issued fresh order on or about 4-7-1950 to the effect that the plaintiff was reinstated in service asfrom 13-6-1947. And accordingly plaintiff joined his duties at Bagalkot from 6-7-1950. This order was - obviously passed after receiving instructions from the I.G.P. When thus the plaintiff was allowed to join the duty on 6-7-50 plaintiff was under the impression that Government corrected over for all the wrongful action taken against the plaintiff. But it appears that for reasons best known to them, Government had the insension of still persisting in the wrongful Act done by them and wanted to be vindictive and oppressiv against the plaintiff and it appears that in their vindictive action when the whole thing was buri d againe on 5-9-50, a charge was framed - against the plaintiff by the Dy.S.P.Bagalkot to the effect " that the plaintiff while serving at Kerur Police Station in the year 1946 with the connivance of U.H.C.Parappa and Ex. P.C.Mahibubsan with the common intention attempted to bbtain an illegal gratification of Rs. 5/ from Shri Sayyad Ayub Hussai etc."

(12) When the above charge was served on the plaintiff he filed his reply to it on 7-9-1950 and after full bearing the Dy.S.P. Bagalkot exonerated the plaintiff of the said charges and held him to be quite innocent and reported accordingly to the D.S.P.who, it is learnt, concutred in the said finding and reported to the D.I.G.P. S.R.Belgaum, who also concurring in the finding reported to the I;G.P. who in his turn reported to Government after concurring in the findings about the innocente of the plaintiff.

(13) Inspite of all the concurrent findings plaintif submits that Government issued a notice to the

the plaintiff on 16-7-1951 which is signed by the Secretary to the Government of Bombay H.D.that " Government did not accept the recommendation of the above officers and considered that the charge of grave misconduct was proved against the plaintiff and issued notice H.D.No.S/153/210/G dated 29-6-1951 calling upon the plaintiff to show cause within 15 days as to why he should not be dismissed from Police Force and threatening the plaintiff to inflict such punishment or to pass such order as deemed fit in case he failed to show cause.

(14) The plaintiff showed cause in writing on or about 25-7-1951 which was within the period allowed by Government and also prayed for personal interview which was not granted and ultimately on or about 27-9-1951 an order was passed by Government to the effect that Government did not accept the recommendation of its own officers as it considered that the charge of ~~its men officers as it men~~ grave misconduct was proved against the plaintiff and in result passed orders by G.R.H.D.No.8153/210 dated 27-9-1952 dismissing the plaintiff from police service and the same was communicated to the plaintiff by the order of the D.S.P. dated 3-10-1951 which was communicated to the plaintiff on 10-10-1951 and since that date the plaintiff has been dismissed.

(15) The plaintiff is filing this suit to get the order of dismissal passed against him by G.R.H.D.No. 8153/210 dated 27-9-1951 and communicated to him on 10-10-1951 set aside and for his reinstatment in service under his proper grade as well as to recover the amountof his arrears of Pay and Allowances to which he is entitled according to the rules haing force of Law in force.

(16) The plaintiff is claiming Rs. 2711-6-0 as the arrears of his pay as under the P.W.

6) ++

of his pay as under the P.M.Rule No.1278 (5) (a) Part IIIm he being honourably acquitted was entitled to have his full pay and all allowances of which he was in re receipt prior to his dismissal. In this way plaintiff full pay for the period from 12-6-147 to 4-7-50 was entitled to an amount of Rs: 5572-5-0 whereas he was given Rs. 2860-14-6 only and thus under the above Rule the plaintiff being honourably acquitted he is entitled to the balance of Rs. 2711-6-0 which he is claiming in this suit. Plaintiff is also claiming the setting aisde the order of his dismissal dated 27-9-1951 on the ground that the said order of dismissal violates the Constitution of India in as much as Article 311(3) is violated as the decision of the Authority empowered to dismiss or to remove the plaintiff or to redure him in rank is final under this article and all the Officers of Govt. including the I.G.P.had passed orders that plaintiff was innocent of hhe charge and recommended for re-instatement.

(17) Similarly the order of dismissal passe against the plaintiff is contrary to the spitit of Article 20 of the Constitution of India as such also it requires to be set aside. Similarly the said order passed by Government is perverse and vindictive and contrary to the principles of Equity, natural justice and good conscience and therefore by this suit the plaintiff prays that the said order dated 27-9-1951 be declared to be ultra virse, void, and inoperatice and plaintiff may by ordered to be re-instated in his former position and also plaintiff is claiming Rs. 2711-6-0 as the arrears of his pay. For the above purposes the present suit is filed by the plaintiff.

(18) The cause of action for the plaintiff for this suit arose on or about 27-9-1951 both for recovering

the amount and for getting the order of dismissal set aside and reinstatement within the jurisdiction this court.

The suit valued as follows:-

Ar Rs. 2711-6-0	...	for recovering of arrears of his pay.
At Rs. 200-0-0	...	for declaration that the order of dismissal is ultra verse and null and void as against the plaintiff.
At. Rs. 5-0-0-	...	For mandatory injuction, to reinstate the plaintiff.

In this way for the purpose Court fees and jurisdictio n the suit is valued at Rs. 2916-6-0.

The suit being against the State of Bombay is filed in the Court of Civil Judge, Senior Division, Bijapur.

(19) The suit being against the state of Bombay, a statutory notice under section 80 of the Civil Procedure Code was given and was delivered to the Collector of Bijapur and Secretary to Govt.H.D. stating the cause of action, name, description and place of residence of plaintiff and the relief which the plaintiff claims.

(a) The plaintiff prays as follows:-
The order of dismissal passed against the plaintiff on or about 27-9-1951 be set aside as void and ultra virse and against the principles of natural justice, equity, and good conscience and also as perverse and vindictive.

(b) A mandatory injuction may be issued against the Defendant to reinstate the plaintiff in his former position in the police force.

(c) Rupees 2711-6-0 may be awarded to the plaintiff as claimed for the arrears of his pay.

(d) Interest on the amount may be allowed to the plaintiff and from the d te of notice to the date

63 H2

of mapyment.

(e) Cost of the suit may be awarded to the plaintiff and such other reliefs as the plaintff may be entitled to on the facts mentioned in the plaint.

(20) Plaintiff holds on property either moveable of immoveable and he is unale to pay the ~~property~~ requisite Court fees stamp. The plaintiff has not disposed of any property moveab e or immoveable during the last year.

He has made no agreemtn regarding the suit claim with any person.

The plaintiff being a PAUPER and unable to pay the requisite court fees, the suit is filed in forma pauperis and it is humbly prayed that permission may be granted to the plaintiff to file this suit and prosecute it in forma pauperis.

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This suit coming before Shri M.H.Kazi Civil Judge Sr. Dn., Bijapur in the presence of Shri A.V. Albal pleader for the plaintiff and Shri A.C. Angadi Government pleader for the defendant - State of Bombay it is hereby ordered and decreed as follows :-

Plaintiff's suit stands dismissed The plaintiff do pay the costs of the defendant incurred in the suit and the costs of the Court fees stamps.

He should also bear his own costs.

N.B. :- Plaintiff has to pay the Court fee amount of Rs. 218-4-0 on claim amount of Rs. 2916-0-0 to the Government.

BILL OF COSTS.

	Plaintiff.	
1.	Stamps on plaint.	0-8-0
2.	Vakalatnama	2-0-0
3.	Papers Exs. 10,12,21, 26, 30, 32, 33, 34, 36, 37, 38, 40, 42.	7-2-0
4.	Pleader's fee	159-6-0
5.	Process fee	3-2-0
6.	Witness Bhatta .	0-0-0
7.	Commissioner's fees.	0-0-0
		Rs. 172-2-0
	Costs disallowed all Exs.	7-2-0
	Balance.	165-0-0

	Defendant.	
1.	Papers. Exs. 4,5,6, 14, 18, 39.	3-12-0
2.	Pleader's fees	159-6-0
3.	Process fee	0-0-0
4.	Witness Bhatta	0-0-0
5.	Commissioner's fees.	0-0-0
		163-2-0
	Costs disallowed . all Exs.	3-12-0
		Balance 159-6-0

Given under my hand and seal of this Court , this day of 11th July 1955.

Sey. M H. Kanji.

Clerk

Civil Judge Sr. Dn.,
Bijapur.

Pleader for the plaintiff

Pleader for the defendant:

65 #5

Suits:
Bijapur.

For setting aside the order of Government, dated the 27th September 1951, dismissing him from the Police force; for reinstatement in service, and arrears of pay.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 18107/E
Sachivalaya, Bombay, 17th August 1955.

Read Government Resolution, Legal Department, No.21410/E, dated the 22nd October, 1953.

Endorsement from the District Government Pleader, Bijapur No.1019 dated the 11th July 1955, stating that the suit noted in the margin was decided by the Civil Judge (Senior Division) Bijapur on the 11th July 1955, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Bijapur.

Civil Suit No.372 of 1952.

Vasudeo Gurunath Kulkarni ... Plaintiff;

Versus

The State of Bombay ... ... Defendant.

" Plaintiff's suit stands dismissed. The Plaintiff do pay the costs of the defendant incurred in the suit and the costs of the Court fee stamps. He should also bear his own costs.".

Letter from the District Government Pleader, Bijapur No.1132, dated the 27th July 1955, forwarding uncertified copies of the judgment and decree.

RESOLUTION: - The result of the suit is recorded.

By order and in the name of the Governor of Bombay,

original

(D.P. Shikhare),
Deputy Secretary to Government.

To

The Home Department,
The Inspector General of Police, Poona,
The Deputy Inspector General of Police Southern Range Belgaum,
The District Superintendent of Police, Bijapur,
The District Government Pleader, Bijapur.

Nair/-

submitted for signature.
DPK 9/8

JS 9/8
DS (Civil)

67

In the Court of the District Judge, Bijapur.

Civil Appeal No.153 of 1955.

1. Vasudeo Gurunath Kulkarni,
age about 40, occupation Nil,
since discharged from Police
Force of Bombay, now residing
at Bijapur. — Appellant. (Orig. Plff).

Vs.

1. The State of Bombay. — Respondent (orig.Deft).

Claim Rs 2,916-0-0 for all purposes.

Being aggrieved by the Judgment and decree passed by the Civil Judge, Sr.Dn.Bijapur, in Civil Suit No.372 of 1952 passed on 11-7-1955, the appellant-abovenamed begs to prefer this appeal on the following among other grounds.

1. The Judgment and decree are contrary to law and evidence.

2. The findings on issues Nos.1,5,6,7 and 8 are - errondeous.

3. The proper scope of the suit is not correctly appreciated by the lower Court.

4. It is an error to say that the plffs has not challenged in the plaint the correctness or the - legality of the Departmental enquiry held by Dy.S.P. Bagalkot in September 1950.

5. It should have been held that there was no - evidence at all which was laid in the said enquiry which would warrant the conclusion of the defendant at Ex.50 and Ex.57.

6. It should have been held that the two - Judgments Exs.44/2 and 44/3 were and could not be evidence against the plff on the charge Ex.46 and the notice Ex.57.

7. It should have been seen that even the - domestic Tribunals cannot form any opinion against the....

the alleged defaulter only on the basis of two judgments, as the same cannot be evidence at all, or can the judgments be substituted for evidence.

8. It should have been seen that till now no reliance whatever is placed on the judgement of the Resident Magistrate, or Bagalkot, which held that the plff was guilty was not made.

9. It should have been seen that the plff was not made aware of the portions of the two judgments Exs.44/2 and 44/3 at any of the enquiries on which the deft wanted to rely and as such there is a failure on the part of the deft to point out the evidence against the plff at the Departmental enquiry and as such it has resulted in grave injustice to the plff.

10. It should have been seen that the charge at Ex.46 does not mention the circumstance of "benefit of doubt" and the plff was not at all aware of the fact that the deft was treating his (Plff's) acquittal in the appeallate Court in Criminal Appeal No.17 of 1947 as the acquittal by benefit of doubt and he was taken by surprise when the said contention was taken up by the deft for the first time in the notice Ex.47 , and as such he had no opportunity at all to meet that case by evidence.

11. The said Departmental proceeding has not taken place according to the provisions of rule No.545 of the Bombay Police Manual.

12. The charge No. 46 was not at all accompanied by a statement of allegations on which each charge is based and the other circumstances which the defendant proposed to take into consideration ware not furnished to the plff and they were not explained to him at all.

13. Sub-Rule 6 of Rule 545 has not been followed at all in as much as when the plff denied the charge neither the witnesses were examined nor was the say of the plff with respect to them recorded.

14. The provisions of sub-rule 7 of Rule 545 was not been followed at all, as also of sub-rules 11,12,13,14 and 15.

69 FA

15. Reasonable opportunity was not given to the plff to defend himself properly at the Departmental enquiry.

16. It should have been seen that Rule No.543 or 546 were not applicable to the facts of that enquiry or this case.

17. It should have been seen that the defendant sought to justify the said Departmental enquiry at para 9 of the W.S. and the issue No.1 clearly pertained to that as also to the legality of the order under Article No.311 of the - Constitution of India.

18. It should have been seen that the deft tried to - support the said enquiry at the trial - even and that it was an issue.

19. It is an error to say that the plff does not dispute the correctness of the enquiry.

20. The plff was not given the correct idea of the charge against him.

21. It should have been held that the Departmental enquiry was rushed through and there was no sufficient time for the plff to make proper arrangement.

22. It should have been seen that the defendant did not choose to examine any witness at the said Departmental enquiry though some of them were residing at Bagalkot only and some at nearby place Kerur, nor did it choose to rely on the statement of the witnesses recorded in the criminal case which led to the conviction of the plff.

23. The deft erred in not accepting the recommendations of the Dy.S.P.Bagalkot D.S.P. of Bijapur D.I.G. of - Belgaum and the I.G.P. of Bombay State that the acquittal of the plff in Criminal appeal No.17/1947 was honorable and that he should be exonorated of the charge at Ex.46 and that he should be re-instated immediately.

24. The notice Ex.57 is erroneous and it is an error to say that the plff was given only benefit of doubt in the said Criminal Appeal.

25. The said notice set out a new ground of benefit of doubt and as such no opportunity was given to the Plff...

plff to meet this case.

26. The provisions of Art 311(2) of the Constitution of India have not been complied with, in as much as the plff had not been given a resonable opportunity of showing cause against the action proposed to be taken by the defendant.

27. Such reasonable opportunity would include among other things the right to cross-examine the witnesses the evidence of whom is sought to be relied upon by the deft, the right to represent his case personally and also through his pleader, and the right to know on what evidence the deft sought to rely and the right to rebut that evidence and also the right to examine witnesses in defence.

28. It should have been seen that a new case of "benefit of doubt" was made out by the defendant for the first time in Ex.57 and as such every reasonable opportunity should have been given to the plff to rebut that case.

29. It is an error to have wrongly interpretted Ex.63

30. It should have been held the deft erred in not granting an interview to place his case, either personally or through his pleader.

31. It should have been held that the deft should not have refused to grant an interview to the plff at least personally in view of Ex.63.

32. It should have been held that the deft has been wrong in calculating the pay of the plff from 12-6-47 upto 4-7-1950 as the pay under the period of suspension.

33. It should have been seen that there was no denial to this part of the case by the defendant.

34. Rule No.549 of the Police Manual is not applicable to the facts of the case.

35. The action of the deft in regard to pay is contrary to Article 14 of the Constitution of India.

36 The relevant rulings quoted have not been properly.

37 The proper issues have not been framed and the case is approached from an erroneous angle.

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71

38. The order of the deft Ex.50 and the order regarding pay is erraneous illegal, vindicative and perverse.

39. It is an error to say that the deft as the final authority in respect of the said Departmental enquiry.

40. It is an error to say that the plff did not point out any material for the inference that the decision of the deft had not been based on legal evidence.

41. Rule No.545(17) of the Bombay Police Manual has been erroneously read.

42. It is an error to say that the plff had sufficient time and opportunities to explain his case to the deft, after the rejection of Ex.63.

43. The order as to costs is erroneous.

It is prayed that this court be pleased to allow this appeal with costs and decree the plff-appellant's suit with costs.

Bijapur:
2-8-1955.

Sd/- Vasudeo Gurunath
Kulkarni.

Order.

Admitted Notice.

10-8-55. Sd.N.S.Metrani
Sess.Judge.

....

Suits:
Bijapur.
For setting aside the order of Government, dated the 27th September 1951 dismissing him from the Police force; for reinstatement in service, and arrears of pay.

GOVERNMENT OF BOMBAY
Legal Department,
Resolution No. 21086/E
Sachivalaya, Bombay, 26th September 1955.

Read Government Resolution, Legal Department, No.18107/E dated the 17th August 1955, the letter from Collector of Bijapur requesting Government's sanction to the defence of the Civil Appeal No.153 of 1955 filed by the plaintiff in the suit noted in the margin.

In the Court of the Civil Judge (Senior Division), Bijapur.

Civil Suit No.372 of 1952.

Vasudeo Gurnnath Kulkarni ... ... Plaintiff;

versus

The State of Bombay ... ... Defendant.

RESOLUTION: Sanction is accorded to the defence of Civil Appeal No.153 of 1955 in the Court of the District Judge, Bijapur on the lines of the brief accompanying Government Resolution, Legal Department No.21410/E dated 22nd October 1953, and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Bijapur dated 11th June 1955.

By order and in the name of the Governor of Bombay,

original

24/9

D.P.Shikhare,
Deputy Secretary to Government.

To

The Home Department,
The Inspector General of Police,
The Deputy Inspector General of Police, Southern Range, Belgaum,
The District Superintendent of Police, Bijapur,
The District Government Pleader, Bijapur.

Please 23. 26.

Nair/-

Submitted for signature.
PPN
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JS 24/9
DS(civil)

Issued 28/9/24/9

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Srikanthan

28 File in S'Bijapur 9/53

TR
27/9

Sub AV VRL 27/9

S. Bijapur 9/53
29/9/53